

1 GENEVIEVE PARSHALLE
2 Environmental Enforcement Section
3 Environment and Natural Resources Division
4 U.S. Department of Justice
5 P.O. Box 7611
6 Washington, DC 20044-7611
7 Telephone: (202) 514-2445
8

9 UNITED STATES DISTRICT COURT
10 FOR THE EASTERN DISTRICT OF WASHINGTON
11

12
13 UNITED STATES OF AMERICA,)
14)
15 Plaintiff,) Civil Action No. 19-3286
16)
17 v.) UNITED STATES'
18) COMPLAINT
19 DEATON LAND, LLC,)
20)
21 Defendant.)
22 _____)
23

24 The United States of America, by the authority of the Attorney General of
25 the United States and through the undersigned attorneys, acting at the request of
26 the United States Coast Guard ("Coast Guard"), files this Complaint and alleges as
27 follows:

28 NATURE OF THE ACTION

29 1. This is a civil action against Defendant Deaton Land, LLC
30 ("Deaton"), pursuant to the Oil Pollution Act ("OPA"), 33 U.S.C. § 2701 et seq., to
31 recover removal costs resulting from the discharge of oil into or upon the navigable

1 waters of the United States and/or the adjoining shorelines. The United States also
2 seeks to recover all costs incurred by the Oil Spill Liability Trust Fund by reason
3 of its claim for removal costs, including interest (including prejudgment interest),
4 administrative costs, and attorney's fees.

5 JURISDICTION AND VENUE

6 2. This Court has subject-matter jurisdiction over the United States'
7 claim under 28 U.S.C. §§ 1331 and 1345 and 33 U.S.C. § 2717(b).

8 3. Venue is proper in the Eastern District of Washington under 28 U.S.C.
9 § 1391(b) and 33 U.S.C. § 2717(b) because it is the judicial district in which the
10 discharge occurred and the claim arose.

11 4. Authority to bring this action is vested in the United States
12 Department of Justice under 28 U.S.C. §§ 516 and 519, and Section 1015(c) of
13 OPA, 33 U.S.C. § 2715(c).

14 PARTIES

15 5. Plaintiff, the United States of America, is acting at the request of the
16 Coast Guard.

17 6. Defendant Deaton is a Washington limited liability company formed
18 in October 2010, with its principal office street address at 2810 Thacker Road,
19 Zillah, Washington, 98953.

1 7. At all relevant times to this action, Deaton owned and/or operated the
2 facility associated with the oil discharge.

3 STATUTORY AND REGULATORY BACKGROUND

4 8. Congress enacted OPA in 1990 to provide for the “quick, efficient
5 cleanup” of oil spills. S. Rep. No. 101-94, at 2 (1989), *reprinted in* 1990
6 U.S.C.C.A.N. 722, 723.

7 9. Federal removal actions are paid for through the Oil Spill Liability
8 Trust Fund, which is administered by the Coast Guard’s National Pollution Funds
9 Center and financed by recoveries from responsible parties and taxes previously
10 imposed on petroleum. *See* 26 U.S.C. § 9509.

11 10. OPA imposes strict liability on parties responsible for the discharge of
12 oil into navigable waters: “each responsible party for . . . a facility from which oil
13 is discharged, or which poses the substantial threat of a discharge of oil, into or
14 upon the navigable waters or adjoining shorelines . . . is liable for the removal
15 costs and damages . . . that result from such incident.” 33 U.S.C. § 2702(a).

16 11. Section 1001(32) of OPA defines a “responsible party” to include
17 “[i]n the case of an onshore facility (other than a pipeline), any person owning or
18 operating the facility” 33 U.S.C. § 2701(32)(B).

19 12. Section 1001(27) of OPA defines “person” to include individuals,
20 corporations, partnerships, and associations. 33 U.S.C. § 2701(27).

1 13. Under Section 1001(9) of OPA, a “facility” is “any structure, group of
2 structures, equipment, or device . . . which is used for . . . producing, storing,
3 handling, transferring, processing, or transporting oil.” 33 U.S.C. § 2701(9).

4 14. Section 1001(24) of OPA defines an “onshore facility” as “any facility
5 . . . of any kind located in, on, or under, any land within the United States other
6 than submerged land.” 33 U.S.C. § 2701(24).

7 15. Section 1001(23) of OPA defines “oil” as “oil of any kind or in any
8 form, including petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes
9 other than dredged spoil” 33 U.S.C. § 2701(23).

10 16. Section 1001(7) of OPA defines “discharge” as “any emission (other
11 than natural seepage), intentional or unintentional, and includes, but is not limited
12 to, spilling, leaking, pumping, pouring, emitting, emptying, or dumping.” 33
13 U.S.C. § 2701(7).

14 17. Under Section 1001(21) of OPA, “navigable waters” means “the
15 waters of the United States, including the territorial sea.” 33 U.S.C. § 2701(21).

16 18. In turn, “waters of the United States” has been defined to include,
17 *inter alia*, all waters which are currently used, were used in the past, or may be
18 susceptible to use in interstate or foreign commerce, and tributaries to such waters.
19 40 C.F.R. § 300.5 (1994); 40 C.F.R. § 110.1 (1993).

1 19. Section 1001(31) of OPA defines “removal costs” as “the costs of
2 removal that are incurred after a discharge of oil has occurred or, in any case in
3 which there is a substantial threat of a discharge of oil, the costs to prevent,
4 minimize, or mitigate oil pollution from such an incident.” 33 U.S.C. § 2701(31).

5 20. Section 1001(30) of OPA defines “remove” and “removal” to mean
6 the “containment and removal of oil . . . from water and shorelines or the taking of
7 other actions as may be necessary to minimize or mitigate damage to the public
8 health or welfare, including, but not limited to, fish, shellfish, wildlife, and public
9 and private property, shorelines, and beaches.” 33 U.S.C. § 2701(30).

10 21. Section 1002(b)(1) of OPA, 33 U.S.C. § 2702(b)(1), provides that
11 removal costs, include “all removal costs incurred by the United States, a State, or
12 an Indian tribe under [33 U.S.C. § 1321] subsection (c), (d), (e), or (l) . . . , or
13 under State law.”

14 22. Section 1001(14) of OPA defines “incident” as “any occurrence or
15 series of occurrences having the same origin, involving one or more vessels,
16 facilities, or any combination thereof, resulting in the discharge or substantial
17 threat of discharge of oil.” 33 U.S.C. § 2701(14).

18 23. Under Section 1012(a) of OPA, 33 U.S.C. § 2712(a), the Oil Spill
19 Liability Trust Fund can be used, *inter alia*, for the payment of removal costs
20 incurred by federal and state authorities, certain non-governmental claims, and

1 “Federal administrative, operational, and personnel costs and expenses reasonably
2 necessary for and incidental to the implementation, administration, and
3 enforcement of [OPA].”

4 24. Under Section 1005 of OPA, 33 U.S.C. § 2705, each responsible party
5 is liable to the United States for interest on the removal costs and such interest
6 begins to accrue on the 30th day following the date on which the claim is presented
7 to the responsible party.

8 GENERAL ALLEGATIONS

9 25. At all relevant times to this action, Deaton was the sole owner of
10 property, including an onshore facility (the “Facility”), located at 2330 Outlook
11 Road, Outlook, Washington.

12 26. The Facility consisted of, among other things, an auto-repair shop
13 building and an aboveground storage tank immediately adjacent to the auto-repair
14 shop building that was used to store waste oil from the auto-repair shop.

15 27. On or about March 1, 2015, oil discharged from the Facility.

16 28. On March 2, 2015, a Federal On-Scene Coordinator from the United
17 States Environmental Protection Agency (“EPA”) responded to the oil discharge.

18 29. EPA confirmed the oil discharge from the Facility into navigable
19 waters and on the adjoining shorelines.

1 30. The oil flowed from the Facility, through irrigation piping and vaults
2 buried on Deaton's property, into a series of irrigation return junction vaults, and
3 into an irrigation ditch that ultimately drains into Sulphur Creek.

4 31. The oil flowed through Sulphur Creek to the Yakima River.

5 32. The oil discharge then flowed downstream in the Yakima River.

6 33. There was oil sheening in the irrigation ditch, Sulphur Creek, and the
7 Yakima River.

8 34. Hydrocarbon identification of oil samples taken from the Facility
9 indicated that the discharging oil contained lubricating oil with some diesel oil.

10 35. Hydrocarbon identification and biomarker analysis also matched oil
11 from the Facility to oil samples taken along the flow path from Deaton's property
12 to the Yakima River.

13 36. Sulphur Creek is a perennial tributary of the Yakima River, with a
14 bed, banks, and ordinary high water mark.

15 37. The Yakima River is used recreationally and commercially for fishing
16 and boating.

17 38. The Yakima River flows into the Columbia River.

18 39. The Columbia River flows into the Pacific Ocean.

40. On March 2, 2015, EPA initiated a removal action and authorized the Washington State Department of Ecology and the Yakama Nation to assist in the removal action.

41. The removal action included securing the source of oil, deploying sorbents in the irrigation ditch, deploying boom in Sulphur Creek and the Yakima River, and collecting oiled birds for decontamination.

42. The removal action also included vacuuming oil out of the vaults buried on Deaton's property, removing contaminated vegetation from the irrigation ditch, collecting pooled oil in the ditch with a vacuum truck, and skimming oil at the confluence of Sulphur Creek and the Yakima River. The collected oil-water mixture was then shipped off site for treatment and disposal.

43. The United States has incurred at least \$1,208,548.75 in removal costs at the Facility. These costs were paid from the Oil Spill Liability Trust Fund.

44. On June 30, 2017, the Coast Guard sent Deaton by certified mail a bill and a written request for reimbursement of the removal costs incurred responding to the oil discharge incident.

45. Deaton has not reimbursed the Coast Guard for any of the removal costs associated with the oil discharge.

CAUSE OF ACTION

Recovery of Removal Costs under the Oil Pollution Act of 1990

1 46. Plaintiff realleges and incorporates by reference the allegations
2 contained in paragraphs 1 through 45 above as if fully set forth herein.

3 47. Deaton is a “person” within the meaning of Section 1001(27) of OPA,
4 33 U.S.C. § 2701(27).

5 48. At all times relevant to this action, Deaton owned and/or operated the
6 Facility.

7 49. Deaton is an “owner or operator” of the Facility within the meaning of
8 Section 1001(26)(A)(ii) of OPA, 33 U.S.C. § 2701(26)(A)(ii), and thus a
9 “responsible party” within the meaning of Section 1001(32)(B) of OPA, 33 U.S.C.
10 § 2701(32)(B).

11 50. The Facility is a structure, group of structures, equipment, or device
12 used for producing, storing, handling, transferring, processing, and/or transporting
13 oil.

14 51. The Facility is a “facility” within the meaning of Section 1001(9) of
15 OPA, 33 U.S.C. § 2701(9).

16 52. The Facility is a facility located on land within the United States that
17 is not submerged land.

18 53. The Facility is an “onshore facility” within the meaning of Section
19 1001(24) of OPA, 33 U.S.C. § 2701(24).

1 54. The lubricating oil with some diesel oil that discharged from the
2 Facility is “oil” within the meaning of Section 1001(23) of OPA, 33 U.S.C.
3 § 2701(23).

4 55. The oil that spilled from the Facility is a “discharge” within the
5 meaning of Section 1001(7) of OPA, 33 U.S.C. § 2701(7).

6 56. The oil discharged into “navigable waters” as defined by Section
7 1001(21) of OPA, 33 U.S.C. § 2701(21).

8 57. The oil discharge from the Facility is an “incident” within the
9 meaning of Section 1001(14) of OPA, 33 U.S.C. § 2701(14).

10 58. After the oil discharge, the United States incurred at least
11 \$1,208,548.75 in costs by containing and removing oil from the Facility, navigable
12 waters, and nearby shorelines, and by taking other necessary actions to minimize
13 and/or mitigate damage to the public health and welfare.

14 59. Deaton is a responsible party for the Facility from which oil was
15 discharged into or upon the navigable waters and/or adjoining shorelines under
16 Section 1002(a) of OPA, 33 U.S.C. § 2702(a).

17 60. As a responsible party for the Facility, Deaton is liable to the United
18 States, under Section 1002(a) of OPA, 33 U.S.C. § 2702(a), to reimburse the Coast
19 Guard for all costs incurred for the removal of oil from the Facility, the navigable
20 waterways, and the adjoining shorelines.

61. As a responsible party for the Facility, Deaton is liable, under Sections 1005 and 1015 of OPA, 33 U.S.C. §§ 2705 and 2715, to reimburse the United States for all costs incurred by the Oil Spill Liability Trust Fund by reason of its claim for removal costs, including interest (including prejudgment interest), administrative costs, and attorney's fees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the United States of America, requests that this Court:

1. Enter judgment against the Defendant for removal costs under Section 1002(a) of OPA, 33 U.S.C. § 2702(a);

2. Award the United States all costs incurred by the Oil Spill Liability Trust Fund by reason of its claim for removal costs, including interest (including prejudgment interest), administrative costs, and attorney's fees, under Sections 1005 and 1015 of OPA, 33 U.S.C. §§ 2705 and 2715; and

3. Grant the United States such other relief as the Court deems appropriate.

Respectfully submitted,

NATHANIEL DOUGLAS
Deputy Section Chief
Environmental Enforcement Section
Environment & Natural Resources Division
U.S. Department of Justice

1 s/ Genevieve Parshalle
2 GENEVIEVE PARSHALLE
3 Trial Attorney
4 Environmental Enforcement Section
5 Environment & Natural Resources Division
6 United States Department of Justice
7 P.O. Box 7611
8 Washington, DC 20044-7611
9 Telephone: 202-514-2445
10 Email: genevieve.parshalle@usdoj.gov
11
12

13 OF COUNSEL:

14
15 Helkei S. Hemminger
16 Legal Counsel
17 National Pollution Funds Center
18 United States Coast Guard
19 2703 Martin Luther King Jr. Ave SE
20 Washington, DC 20593-7605
21 Telephone: 202-795-6057
22 Email: helkei.s.hemminger@uscg.mil

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

United States of America

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
Genevieve Parshalle, Department of Justice, Environment & Natural
Resources Division, P.O. Box 7611, Ben Franklin Station, Washington,
DC, 20044, 202-514-2445

DEFENDANTS

Deaton Land, LLC

County of Residence of First Listed Defendant Yakima County
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)
Lori Terry, Foster Garvey PC, 1111 Third Avenue, Suite 3000, Seattle,
WA, 98101, 206-447-8902

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☒ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question
(U.S. Government Not a Party)
☐ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input checked="" type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from Another District (specify)
☐ 6 Multidistrict Litigation - Transfer
☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Oil Pollution Act, 33 U.S.C. § 2701 et seq.

Brief description of cause:

Civil action to recover removal costs resulting from discharge of oil

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$
1,208,548.75

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____

AMOUNT _____

APPLYING IFP _____

JUDGE _____

MAG. JUDGE _____